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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,925	12/10/2003	Mary L. McDaniel	KCX-699 (19266)	7367

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EXAMINER
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COLLINS, MICHAEL

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 04/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/732,925

Applicant(s)

MCDANIEL ET AL.

Examiner

Michael K. Collins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/31/2006</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This is a first action on the merits of application 10/732925.

#### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "36" and "38" have both been used to designate the hinge and "52" and "54" have been use to designate the detent. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Objections***

3. Claim 13 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In claim 13 the applicant

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discloses, "The absorbent article carrying case as in claim 13....". Appropriate correction is required.

4. Claim 4 is objected to because of the following informalities: the applicant discloses, "...circumferential sides walls..." the letter "s" should be removed from side. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 2 recites the limitation "first said wall and second said wall" in reference to the first and second wall. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1-5, 7, 8, 11-13, 16-19, and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Borrero (USP 6,799,695).

6. Regarding claim 1, Borrero discloses a portable carrying case for personal care absorbent articles, comprising:

- a body (10), said body defining an internal enclosure for receipt of a plurality of stacked personal care absorbent articles (12)
- an opening (48) defined in said body (10) at a location so as to at least partially expose an upper one of said absorbent articles (12) for dispensing without generally exposing underlying absorbent articles (12)
- a lid (46) movably disposed relative to said body (10) from a closed position wherein said opening (48) is covered by said lid (46) to an open position wherein access is provided to said absorbent articles through said opening (48)
- a manual push structure (32 and 42) defined in said body generally opposite from said opening (48), said push structure (32 and 42) configured to allow a user to push on the bottommost one of said stacked absorbent articles (12) so as to move the uppermost one of said stack of absorbent articles (12) towards said opening (48) for grasping and retrieval by the user.

Regarding claim 2, Borrero discloses an absorbent article carrying case as in claim 1, and further discloses a body comprising a multi-sided structure (10), said opening (48) defined in a first said wall (22) and said push structure (32 and 42) defined in an opposite second said wall (30) [the push structure defined in the second wall may be positioned to be opposite of the first wall].

Regarding claim 3, Borrero discloses the absorbent article carrying case as in claim 2, and further discloses a multi-sided structure comprising a front wall (22), a back wall (30), and circumferential sides walls (24 and 26) so as to define an elongated box-like structure, said opening (48) defined in said front wall (22) and said push structure defined in said back wall (30).

Regarding claim 4, Borrero discloses the absorbent article carrying case as in claim 3, and further discloses circumferential side walls (24 and 26) that define a closed perimeter of said enclosure in said open and closed positions of said lid (46) such that said absorbent articles (12) cannot be slid out of said body and are removed by the user by pulling on said uppermost article in a direction generally transverse to a plane of said opening (48).

Regarding claim 5, Borrero discloses the absorbent article carrying case as in claim 1, and further discloses a lid (46) that is pivotal relative to said body (10).

Regarding claim 7, Borrero discloses the absorbent article carrying case as in claim 1, and further discloses a body (10) comprising a shape generally conforming to an outline of said absorbent articles (12) carried therein.

Regarding claim 8, Borrero discloses the absorbent article carrying case as in claim 1, and further discloses a push structure (32 and 42) comprising an access opening defined through a wall of said body, said access opening having a restricted size so as to prevent removal of said bottommost article through said access opening (see Figures 2 and 3).

Regarding claim 11, Borrero discloses the absorbent article carrying case as in claim 1, and further discloses a push structure (32 and 42) comprising a resilient portion of a wall (30) of said body generally opposite from said opening (48).

Regarding claim 12, Borrero discloses the absorbent article carrying case as in claim 1, and further discloses a viewing window (32 and 34) such that a user can ascertain the contents of said body (10) without opening said lid (46).

Regarding claim 13, Borrero discloses the absorbent article carrying case as in claim 12, and further discloses a window (32 and 34) that is incorporated with said push structure (32 and 36).

Regarding claim 16, Borrero discloses the absorbent article carrying case as in claim 1, and further discloses a lid (46) defining at least a portion of a front wall (22) of said body (10) in said closed position such that said opening (48) is defined in said front wall (22) upon said lid (46) being moved to said open position.

Regarding claim 17, Borrero discloses the absorbent article carrying case as in claim 1, and further discloses a stack of said personal care absorbent articles (12) carried in said body (10).

Regarding claim 18, wherein said personal care absorbent articles comprise one of sanitary napkins, pantliners, tampons, and interlabial devices, the MPEP states:

**§ 2115 [R-2] Material or Article Worked Upon by Apparatus**

**MATERIAL OR ARTICLE WORKED UPON DOES NOT LIMIT**

**APPARATUS CLAIMS**

“Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, “[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims.”

Regarding claim 19, Borrero discloses the absorbent article carrying case as in claim 1, and further discloses a body (10) comprising an ergonomic shape generally conforming to the hand of the user.

Regarding claim 32, wherein said personal care absorbent articles comprise one of sanitary napkins, pantliners, tampons, and interlabial devices, the MPEP states:

**§ 2115 [R-2] Material or Article Worked Upon by Apparatus**

**MATERIAL OR ARTICLE WORKED UPON DOES NOT LIMIT**

**APPARATUS CLAIMS**

“Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, “[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims.”

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:



(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borrero (USP 6,799,695) in view of Yamada (USP 5,704,471). Borrero discloses the absorbent article carrying case as in claim 1. However, he does not disclose a lid that is slidable relative to the said body. Yamada discloses a lid that is slidable relative to the said body for the purpose of covering and uncovering the tissue-dispensing opening (see column 2 lines 20-21). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Borrero by including a lid that is slidable relative to the said body, as disclosed by Yamada, for the purpose of covering and uncovering the tissue dispensing opening.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borrero (USP 6,799,695) in view of Pehr (USP 6,349,849). Borrero discloses the absorbent article carrying case as in claim 8. However, he does not disclose an access opening that is covered by an elastic material. Pehr discloses an access opening that is covered by an elastic material for the purpose of allowing a user to extend their hands inside the opening to withdraw a tissue (see column 3 lines 54-64). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Borrero by including an access opening that is covered by an elastic material, as disclosed by Pehr, for the purpose of allowing a user to extend their hands inside the opening to withdraw a tissue.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borrero (USP 6,799,695) in view of Pehr (USP 6,349,849) and in further view of Amundson et al. (USP 6,604,651). Borrero in view of Pehr discloses an absorbent article carrying case as in claim 9. However, Pehr does not disclose the elastic material to be translucent. Amundson et al. discloses the elastic material to be translucent for the purpose of providing an indication of quantity of wipes remaining in the package (see column 2 lines 46-49). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Pehr by using translucent elastic material, as disclosed by Amundson et al., for the purpose of providing an indication of the quantity of wipes remaining in the package.

10. Claims 14, 15, 20, 21, 23, 24, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borrero (USP 6,799,695) in view of Peebles (USP 3,343,716).

Regarding claim 14, Borrero discloses the absorbent article carrying case as in claim 1. However, he does not disclose a biasing structure configured with said body to bias said stacked absorbent articles generally away from said opening and towards said push structure. Peebles discloses a biasing structure (21) configured with said body to bias said stacked absorbent articles generally away from said opening and towards said push structure for the purpose of preventing the entire box from rising (see column 2 lines 67-72). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Borrero by including a biasing structure configured with said body to bias said stacked absorbent articles generally away from

said opening and towards said push structure, as disclosed by Peebles, for the purpose of preventing the entire box from rising.

Regarding claim 15, Borrero discloses the absorbent article carrying case wherein said biasing structure comprises a detent (36 and 40) formed in a front wall of said body and said push structure is defined in a back wall of said structure

Regarding claim 20, Borrero discloses a portable carrying case for personal care absorbent articles, comprising:

- an elongated body (10) having a front wall (22), back wall (30), and side walls (24 and 26), said body (10) defining an internal enclosure within said walls
- a stack of personal care absorbent articles (12) carried in said enclosure
- an opening (48) defined in at least a portion of said front wall body (22) at a location so as to expose an upper one of said absorbent articles (12) for dispensing through said opening (48) without generally exposing underlying absorbent articles (12)
- said side walls (24 and 26) defining a closed perimeter around said opening such that said absorbent articles (12) are prevented from being slid out of said enclosure
- a lid (46) movably disposed relative to said body (10) from a closed position wherein said opening (48) is covered by said lid (46) to an open position wherein access is provided to said absorbent articles (12) through said opening (48)
- a manual push structure (32 and 42) defined in said back wall (30) and configured to allow a user to push on the bottommost one of said stacked

absorbent articles (12) so as to move the uppermost one of said stack of absorbent articles (12) towards said opening (48) for grasping and retrieval by the user in a direction generally transverse to a plane of said front wall (22). However, he does not disclose a biasing structure configured with said body and disposed to bias said stack of absorbent articles towards said back wall. Peebles discloses a biasing structure (21) configured with said body and disposed to bias said stack of absorbent articles towards said back wall for the purpose of preventing the entire box from rising (see column 2 lines 67-72). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Borrero by including a biasing structure configured with said body and disposed to bias said stack of absorbent articles towards said back wall, as disclosed by Peebles, for the purpose of preventing the entire box from rising.

Regarding claim 21, Borrero discloses the absorbent article carrying case as in claim 20, wherein said lid is pivotal relative to said body.

Regarding claim 23, Borrero discloses the absorbent article carrying case as in claim 20, wherein said body comprises a shape generally conforming to an outline of said absorbent articles carried therein

Regarding claim 24, Borrero discloses the absorbent article carrying case as in claim 20, wherein said push structure comprises an access opening defined through said back wall, said access opening having a restricted size so as to prevent removal of said bottommost article through said access opening.

Regarding claim 27, Borrero discloses the absorbent article carrying case as in claim 20, wherein said push structure comprises a resilient portion of said back wall generally opposite from said opening.

Regarding claim 28, Borrero discloses the absorbent article carrying case as in claim 20, wherein said body further comprises a viewing window such for a user to ascertain the contents of said body without opening said lid.

Regarding claim 29, Borrero discloses the absorbent article carrying case as in claim 28, wherein said viewing window is incorporated with said push structure.

Regarding claim 30, Borrero discloses the absorbent article carrying case as in claim 20, wherein said biasing structure comprises a detent (36 and 40) formed in said front wall of said body.

11. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borrero (USP 6,799,695) in view of Peebles (USP 3,343,716) and further in view of Yamada (USP 5,704,471). Borrero in view of Peebles discloses the absorbent article carrying case as in claim 20. However, neither discloses the lid to be slidable relative to said body. Yamada discloses a lid that is slidable relative to the said body for the purpose of covering and uncovering the tissue-dispensing opening (see column 2 lines 20-21). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Borrero in view of Peebles by including a lid that is slidable relative to the said body, as disclosed by Yamada, for the purpose of covering and uncovering the tissue dispensing opening.

12. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borrero (USP 6,799,695) in view of Peebles (USP 3,343,716) and further in view of Pehr (USP 6,349,849). Borrero in view of Peebles discloses the absorbent article carrying case as in claim 24. However, neither disclose said access opening to be covered by an elastic material. Pehr discloses an access opening to be covered by an elastic material for the purpose of allowing a user to extend their hands inside the opening to withdraw a tissue (see column 3 lines 54-64). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Borrero in view of Peebles by including an access opening that is covered by an elastic material, as disclosed by Pehr, for the purpose of allowing a user to extend their hands inside the opening to withdraw a tissue.

13. Claim 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Borrero (USP 6,799,695) in view of Peebles (USP 3,343,716) and Pehr (USP 6,349,849) as applied to claim 25 above, and further in view of Amundson et al (USP 6,604,651). Borrero in view of Peebles and in further view of Pehr discloses the absorbent article carrying case as in claim 25. However, Pehr does not disclose said elastic material to be translucent. Amundson et al. (USP 6,604,651) discloses the elastic material to be translucent for the purpose of providing an indication of quantity of wipes remaining in the package (see column 2 lines 46-49). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Pehr by using translucent elastic material, as disclosed by Amundson et al., for the purpose of providing an indication of the quantity of wipes remaining in the package.

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14. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peebles (USP 3,343,716) in view of Borrero (USP 6,799,695). Peebles discloses a portable carrying case for personal care absorbent articles, comprising:

- an elongated body (18, 19, 21) having a front wall (21), back wall (19), and side walls (18), said body (18, 19, 21) defining an internal enclosure within said walls
- a stack of personal care absorbent articles (11) carried in said enclosure
- an opening (22) defined in at least a portion of said front wall body (21) at a location so as to expose an upper one of said absorbent articles (11) for dispensing through said opening (22) without generally exposing underlying absorbent articles (11)
- said side walls (18) defining a closed perimeter around said opening such that said absorbent articles (11) are prevented from being slid out of said enclosure
- a manual push structure (20) defined in said back wall (19) and configured to allow a user to push on the bottommost one of said stacked absorbent articles (11) so as to move the uppermost one of said stack of absorbent articles (11) towards said opening (22) for grasping and retrieval by the user in a direction generally transverse to a plane of said front wall (21)
- a biasing structure (21) configured with said body (18) and disposed to bias said stack of absorbent articles (11) towards said back wall (19)
- said biasing structure comprises a detent (see column 2 lines 70-72) formed in said front wall (21) of said body (18, 19, 21)

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However, he does not disclose a lid movably disposed relative to said body from a closed position wherein said opening is covered by said lid to an open position wherein access is provided to said absorbent articles through said opening and the lid defined in at least a portion of a front wall of said body in said closed position such that said opening is defined in said front wall upon said lid being moved to said open position, said detent formed in said lid. Borrero discloses a lid movably disposed relative to said body from a closed position wherein said opening is covered by said lid to an open position wherein access is provided to said absorbent articles through said opening and the lid defined in at least a portion of a front wall of said body in said closed position such that said opening is defined in said front wall upon said lid being moved to said open position, said detent formed in said lid (see element 50 of the front body) for the purpose of providing access for removing a sanitary napkin and protective means for the next sanitary napkin (see column 2 lines 25-32). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Peebles by including a lid movably disposed relative to said body from a closed position wherein said opening is covered by said lid to an open position wherein access is provided to said absorbent articles through said opening and the lid defined in at least a portion of a front wall of said body in said closed position such that said opening is defined in said front wall upon said lid being moved to said open position, said detent formed in said lid, as disclosed by Borrero, for the purpose of providing access for removing a sanitary napkin and protective means for the next sanitary napkin.



***Conclusion***

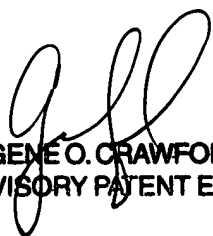
15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael K. Collins whose telephone number is (571) 272-8970. The examiner can normally be reached on 8:30 am - 5:00 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M.C.  
3/31/2006

  
GENE O. CRAWFORD  
SUPERVISORY PATENT EXAMINER